

ST 04-9

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**ABC SOCIETY
Applicant**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

Docket # 03-ST-0000

Revocation of Sales Tax Exemption number

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Kent R. Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

ABC Society (hereinafter the “Applicant” or “Taxpayer”) seeks an exemption from the application of tax under the Illinois Retailers’ Occupation Tax Act (35 **ILCS** 120/1 *et seq.*) (hereinafter the “ROTA” or the “ROT”) and the Illinois Use Tax Act (35 **ILCS** 105/1 *et seq.*) (hereinafter the “UTA” or the “UT”) as an entity organized and operated exclusively for charitable purposes. 35 **ILCS** 120/2-5; 105/3-5. The Department revoked the previously granted exemption number and applicant timely protested and requested a hearing on the issue. At the hearing, oral and documentary evidence was received. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. The following Findings of Fact and Conclusions of Law are made in support of

this recommendation in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 **ILCS** 100/10-50).

FINDINGS OF FACT:

1. Applicant received a letter from the Department revoking its tax exemption number on the basis that it is not organized and operating for charitable purposes under 35 **ILCS** 120/2-5 and 86 Admin Code ch. I, Sec. 130.120(h). Applicant timely protested the revocation. (Dept. Ex. No. 1)

2. Applicant is incorporated, as of August 1983, in the State of Illinois under the General Not For Profit Corporation Act of Illinois. (Dept. Ex. No. 2)

3. Applicant is exempt from the imposition of federal income tax under section 501 (c)(3) of the Internal Revenue Code. (Dept. Ex. No. 2)

4. Applicant's by-laws provide that:

The purpose of the ABC SOCIETY is for the study and preservation of the old house. This shall include but not be limited to, the techniques of construction and restoration of the old house and grounds, the history of the owners and their surrounding community and the education of the present community as to the importance of preserving our architectural heritage. (Dept. Ex. No. 2)

5. Taxpayer's general membership is comprised of persons who have paid the dues set by the Board of Directors for the fiscal year. In 2001 the dues were \$25.00. Benefits of membership include a 10% savings on items at the ABC Warehouse, use of applicant's reference library, meeting people affiliated with applicant, and receiving a quarterly newsletter. (Dept. Ex. No. 2 p. 22; Tr. pp. 17-22)

6. Taxpayer's stated mission is "to preserve pre-1940 buildings in Anywhere County and the communities and heritage they represent." Applicant's first priority is the maintenance of older communities. (Dept. Ex. No. 2 p. 9; Tr. pp. 11, 14-15)

7. Taxpayer operates the ABC Warehouse, a center for recycled pre-1940 building parts, restoration supplies, and reproduction materials. In addition, applicant's activities include the ABC Tour and ABC Fair, Gift to Street Awards, Barn and Big Barn Dances, workshop presentations, and ABC Awards. Taxpayer acts as a resource center with local contractors and people who are trying to renovate old houses. (Dept. Ex. No. 2 pp. 15-22; Applicant's Ex. No. 1; Tr. pp. 27-33)

8. The purpose of applicant's warehouse is two-fold: (1) to provide a place where historic building materials can be saved, stored, and reused rather than burned, or bulldozed and land filled; and (2) to provide a place where people who are restoring or maintaining old buildings, or looking for interesting details to put in newer buildings, can find historic materials. (Dept Ex. No. 2 p. 24)

9. Items are donated to applicant for sale in the warehouse. If an older building is to be demolished, taxpayer contacts the owner and receives permission to salvage as many items as it feels can be reused. Those items are taken to the warehouse to be sold. The owner of the building receives a tax deduction because taxpayer has a 501(c)(3) designation from the federal government. (Dept. Ex. No. 2 pp. 12-13; Tr. pp. 12-13)

10. Taxpayer's warehouse is open to the public. Its reference library is also open to the public. (Tr. pp. 15-16)

11. Taxpayer uses a "what the market will bear" pricing guide for the items it sells in the warehouse. Taxpayer sells old millwork, door casings, door and window surrounds, doors,

hardware, old door handles and door plates, electrical lighting, some plumbing fixtures, sinks, glass, fireplace mantels, wood flooring, posts, and floor joists. (Tr. pp. 22-25)

13. Applicant's "cash flow" document as of July 14, 2001 shows income¹ of \$20,085.72 (51.27%) from the ABC warehouse; \$1,305.00 (3.33%) from XXXX; \$270.00 (0.69%) from ABC Fair; \$3,950.00 (10.08%) from ABC Tour; \$3,305.00 (8.44%) from Membership Dues; \$6,235.00 (15.92%) from Sponsors; \$283.70 (0.72%) from Friends; \$2,500.00 (6.38%) from Grants; \$1,216.46 (3.11%) from Sales Tax Collected; and \$24.26 (0.06%) from Interest Income for total income of \$39,175.14. (Dept. Ex. No. 2 p. 10)

14. The "cash flow" document for 2002 shows income² from sales of \$72,466.92 (75.16%) broken down by Warehouse-\$64,849.38, Tour-\$5,520.00, Fair-\$1,997.54 and 2001 Fair-\$100.00. Sponsors income is shown as \$8,175.00 (8.48%) broken down by Warehouse-\$435.00, Tour-\$2,125.00, Fair-\$5,600.00, and membership-\$15.00. Dues income is \$4,440.00 (4.61%) and is totally from Membership. Donations are \$5,584.39 (5.79%) and are totally from Friends. Grants income is shown as \$1,500.00 (1.56%) broken down by Warehouse-\$1,000.00 and Friends-\$500.00. Sales Tax Collected is \$4,209.99 (4.37%) totally from the Warehouse. Interest income is \$34.43 (0.04%) from the Warehouse. (Applicant's Ex. No. 2)

CONCLUSIONS OF LAW:

The UTA and the ROTA both provide for exemption from the imposition of the respective taxes on the gross receipts from the sale of tangible personal property to entities "organized and operated exclusively for charitable, religious, or educational purposes. . . ." 35 ILCS 105/3-5(4); 120/2-5(11). Applicant had its exemption number revoked on the basis that it is not organized and operated for charitable purposes under the Illinois statutes.

¹ The terminology and percentages are taken directly from the document.

The well-settled law in Illinois regarding taxation exemption is that a statute granting exemption must be strictly construed in favor of taxation and against exemption. Wyndemere Retirement Community v. Department of Revenue, 274 Ill.App.3d 455, 459 (2nd Dist. 1995). Further, the exemption claimant has the burden of proving its entitlement clearly and conclusively (*id.*) with all facts construed and debatable questions resolved in favor of taxation. *Id.*

Although it was a case concerning a property tax exemption, Illinois courts have used guidelines set forth in Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968) in determining whether an entity qualifies as one organized and operated for charitable purposes under the ROTA and UTA. Wyndemere Retirement Community v. Department of Revenue, *supra*; Friends of Israel Defense Forces v. Department of Revenue, 315 Ill. App. 3d 298, 303-04 (1st Dist. 2000). These guidelines are that the entity: (1) has no capital, capital stock or shareholders; (2) earns no profit or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old Peoples Home v. Korzen, *supra*, at 156-57.

Also, the term “exclusive” means the primary, and not incidental or secondary purpose. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 436 1st Dist. 1987). In addition, while there may be restrictions on a group benefited by the entity’s charity, “the service rendered to those eligible must act to relieve the public of an obligation, moral or economic, which it would otherwise have to such beneficiaries or it must confer some general benefit onto

² The terminology and percentages are taken directly from the document.

the public.” *Id.* at 435. Finally, it is not enough that the entity’s organizational documents profess charitable purpose. Instead, an analysis of applicant’s activities is necessary to determine whether it actually is a charitable institution. Wyndemere Retirement Community v. Department of Revenue, *supra*, at 460; Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987)

It is acknowledged that the Methodist Old Peoples Home guidelines are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm’n on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant primarily serves non-exempt interests, such as those of its own dues-paying members (Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956); Morton Temple Association v. Department of Revenue, *supra*) or operates primarily in the public interest and lessens the State’s burden. DuPage County Board of Review v. Joint Comm’n on Accreditation of Healthcare Organizations, *supra*.

As the Department has suggested, this situation is very similar to the one the court faced in Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988). Although the court admitted that the Salvation Army is a charitable organization, its use of the thrift store to generate income did not qualify for a property tax exemption.

In Salvation Army, the Army used the income produced by the thrift store to fund the organization’s charitable rehabilitation program. The primary use of the property was to generate income. The court decided that did not entitle the property to a charitable exemption because it is the primary use of the property, rather than the use of the income from that primary use, that is the determining criteria for exemption. “The thrift store sells used clothing, furniture, glassware,

and household furnishings of all kinds donated to the Salvation Army by individuals in the community.” *Id.* at 339 Similarly, taxpayer herein sells donated items to other individuals.

In Wyndemere, *supra*, the appellate court found that a subsidiary of the Central DuPage Health System was developing a 216-unit, life-care community for the elderly in Wheaton, Illinois. Wyndemere provides the residents with a large number of services and programs and has one, two, and three bedroom apartments available for rent. Residents pay an entrance fee based upon the size of the unit ranging from \$99,000 to \$285,000 plus a monthly fee to cover services such as cable television, housekeeping, meals, laundry service, transportation, utilities and wellness programs. A detailed application is required of a potential resident to determine if they could afford the facility. If a resident is forced, due to health reasons, to enter a nursing home, the resident’s unit is resold and 75% of the market value is placed in an account for the resident. The resident continues to pay the monthly fee even though the resident no longer resides at Wyndemere. Wyndemere has the right to access the account from the sale of the unit for the monthly fee if the resident can no longer afford it. Wyndemere had a charitable policy that was found to be *de minimus* and speculative.

After applying the factors enumerated in Methodist Old Peoples Home, the court determined that Wyndemere did not qualify for an exemption from sales and use tax. Specifically, the court found that charity was not dispensed to all who needed it and in fact Wyndemere only dispensed charity to 2 residents out of 125. Its funds were not derived mainly from public and private charity, but rather from the substantial entrance and monthly maintenance fees. In addition, obstacles are placed in the way of those seeking the charitable benefits. Wyndemere failed to show that its primary purpose for its use of the property was

charitable, but rather its primary purpose was to provide an enhanced lifestyle for those who could afford it. The court affirmed the denial of exemption based upon these factors.

In the instant matter, taxpayer runs a commercial warehouse selling parts of old houses to the general public. The main source of income for taxpayer is from those sales. That income is not from donations from public and private charity as suggested in a guideline in Methodist Old Peoples Home, *supra*. Taxpayer admittedly is saving those artifacts from destruction, but that is not a criteria for a charitable sales tax exemption. In addition, applicant has no charitable policy for those unable to bear the costs of the items it sells. The sales price is based upon a typical commercial pricing system of “what the market will bear.” Therefore, taxpayer has not established that it meets several other guidelines set forth in Methodist Old Peoples Home.

It is clear that ABC Society fails to meet standards necessary to qualify as a charity for purposes of the ROTA and UTA. It is therefore recommended that the requested sales tax exemption for a charitable organization be denied to ABC Society.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
Date: April 16, 2004